



Comptroller General  
of the United States

Washington, D.C. 20548

23845

## Decision

REDACTED VERSION

**Matter of:** Systems Research and Applications Corp.

**File:** B-257939.5

**Date:** February 28, 1995

Alfred M. Wurglitz, Esq., Brian D. Boyle, Esq., and P. Christian Scheurer, Esq., O'Melveny & Myers, for the protester.

Kenneth B. Weckstein, Esq., Constance A. Wilkinson, Esq., and Ronald Stewart, Esq., Epstein, Becker & Green, for ICF Incorporated, an interested party.

Kenneth R. Pakula, Esq., Environmental Protection Agency, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that the agency used unstated evaluation factors when the evaluators considered issues related to the protester's proposed use of [DELETED] subcontractors is denied where the protester's proposal showed that the protester depended upon subcontractor personnel and expertise to perform a significant portion of the work, and the agency's evaluation of subcontractor matters was reasonable and consistent with the solicitation evaluation scheme.

2. Agency was not required to hold discussions regarding the protester's personnel qualifications and corporate capability and experience since the protester's proposal was rated as adequate or better on these evaluation factors/subfactors, and agencies are not required to point out elements of acceptable proposals that receive less than the maximum evaluation score.

3. Protest alleging that the awardee "gamed" its proposal for a cost-plus-fixed-fee contract by offering low-priced subcontractor personnel when the awardee will actually use

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\*The decision issued February 28, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

its own higher-priced employees to perform the work is denied where there is no evidence to support the allegation and the contract requires contracting officer approval of the contractor's staffing plan for each work assignment under the contract.

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#### DECISION

Systems Research and Applications Corp. (SRA) protests the Environmental Protection Agency's (EPA) award of a contract to ICF Incorporated pursuant to request for proposals (RFP) No. W301062-G1. SRA alleges that: (1) EPA improperly evaluated its proposal on the basis of factors that were not set forth in the RFP; (2) the agency did not hold meaningful discussions with SRA; (3) ICF "gamed" its proposal by proposing low-priced subcontractors that will not be used in performing the contract; and (4) the agency's evaluation of ICF's proposal was less stringent regarding certain subcontractor issues.

We deny the protest.

Issued on September 27, 1993, the RFP solicited proposals for providing analytical and technical services to support the EPA in planning, implementing, and evaluating the agency's chemical emergency preparedness, prevention, and community right-to-know program, and supporting EPA's Chemical Emergency Preparedness and Prevention Office. The RFP contemplated a level-of-effort, cost-plus-fixed-fee contract for a 1-year base period with options for three additional 1-year periods. The RFP stated that proposals would be evaluated on four technical/management evaluation factors and gave their relative weights as: technical approach to the statement of work (SOW) task areas (30 points); personnel qualifications, experience, and availability (25 points); corporate capability, experience, and knowledge of applicable statutory and regulatory policies and responsibilities (15 points); and management approach (30 points). The RFP stated that technical quality was considered more important than cost or price, but that evaluated cost or price would become more important as proposals become more equal in technical merit.

Six proposals were received by the EPA by the October 29 closing date for receipt of initial proposals. Initial proposals were evaluated by a Technical Evaluation Panel, and a competitive range which included only the SRA and ICF proposals was established. Oral discussions were held with both firms and a list of discussions questions was provided to each. Both offerors revised their proposals in response to the discussions and submitted best and final offers (BAFO) by the May 4 closing date. The technical evaluation panel evaluated the technical proposals, and EPA auditors,

assisted by the Defense Contract Audit Agency, evaluated the cost proposals for reasonableness and realism. On July 11, after conducting a cost/technical tradeoff analysis, the contracting officer awarded the contract to ICF as the superior, higher-rated offeror. ICF's proposal was approximately [DELETED] higher in cost than SRA's proposal. However, the agency concluded that ICF's superior technical proposal was worth the additional cost. Agency officials debriefed SRA on July 26, 1994, and by letter of July 27, SRA filed its initial protest in our Office.

The protester alleges that the EPA improperly downgraded its proposal because it proposed the use of several subcontractors to do large portions of the work.<sup>2</sup> The protester states that at the debriefing conference the EPA employees stated their belief that the EPA's lack of privity with SRA's proposed subcontractors would preclude agency program and technical personnel from providing technical guidance to subcontractor personnel. The protester also asserts that its proposal was downgraded because the agency preferred the use of prime contractor resources to the exclusion of subcontractor capabilities, and because the agency preferred prime contractor/subcontractor teams that had previously worked together to fulfill similar requirements for the EPA or other agencies. SRA contends that it was improper for EPA to evaluate and give its proposal a lower rating based on its proposed use of subcontractors because the RFP contained no evaluation factors concerning use of subcontractors or statement that

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<sup>1</sup>SRA raised additional protest issues in its letters of August 9, September 23, and October 13.

<sup>2</sup>SRA cites 49 references to its subcontractors in the evaluation documents, allegedly showing that the evaluators were unduly concerned with its reliance on subcontractors and unreasonably downgraded its proposal because of that concern. We reviewed every one of the cited comments before concluding that the evaluation was reasonable and consistent with the RFP's evaluation scheme but will not discuss every one of the comments here. We note that many of the evaluators' comments regarding SRA's using subcontractors are favorable. We also point out that the large number of comments regarding subcontractors is somewhat misleading because the total number includes many statements that are duplicative. For example, the same basic comment might be made by more than one evaluator on their individual scoresheets, then the comment might be repeated in the consensus report on the initial proposal evaluation, repeated again in the consensus report on BAFOs, and again in the source selection document.

the agency preferred having the work performed by the prime contractor rather than by subcontractors.

The agency denies that it used any unstated evaluation factors. The agency reports that SRA has misinterpreted statements regarding privity of contract made during the debriefing conference. According to the EPA, the contracting officer left the room to get legal advice concerning whether she should give SRA its technical scores and tell SRA how many offerors were in the competitive range. During her absence, SRA and EPA personnel engaged in a conversation involving SRA's past experience managing subcontractors; privity of contract was raised in the context of whether it would be appropriate for agency personnel to deal directly with subcontractor personnel or whether such contact should be made through an SRA employee. When the contracting officer returned to the room and was apprised of the conversation that took place, she affirmed that it is the agency's position that agency employees should communicate with subcontractor employees via the prime contractor. She also added that she did not understand why the subject of privity was even being discussed because it was not an area identified as a weakness in SRA's proposal by the evaluators.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id. While the agency is required to identify the major evaluation factors in the RFP, it is not required to identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Human Resources Research Org., B-203302, July 8, 1982, 82-2 CPD ¶ 31.

There is no evidence in the record<sup>3</sup> to support the allegation that SRA's proposal was downgraded because it included subcontractors. To the contrary, the record shows that SRA's proposal received ratings of adequate or better on each and every evaluation factor and subfactor. Moreover, notwithstanding the debriefing conference

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<sup>3</sup>We examined the entire evaluation record, including individual evaluators' scoresheets, consensus reports, and SRA's and ICF's proposals in light of the protester's allegations.

discussion about privity of contract, the contemporaneous evaluation record shows that SRA's proposal was not downgraded because its subcontractors lacked privity with EPA. As there is no mention of privity anywhere in the evaluation record, it is clear that this was not a factor in the evaluation. Additionally, there is no evidence that SRA's proposal was downgraded because the evaluators preferred prime contractor resources to the exclusion of subcontractor capabilities. We note that SRA's proposal received ratings of adequate or better on every evaluation factor and subfactor, and ICF's proposal received an evaluation score of 100 out of a possible 100 points even though ICF proposed [DELETED]. Thus, it appears that EPA was not biased against the use of subcontractor resources as the protester suggests. Because there is no support for the protest allegations, they are denied. See Alpha Bldg. Corp., B-255178; B-255178.2, Feb. 14, 1994, 94-1 CPD ¶ 102; Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149.

The protester also alleges that the agency improperly considered the fact that SRA's proposed team of seven companies had not previously worked together as a team. SRA contends that this was improper because the RFP did not include any evaluation factor expressing a preference for contractor/subcontractor teams that had previously been formed to fulfill similar or identical requirements for the EPA or other agencies. However, we find no impropriety here since the agency's consideration of SRA's team, the qualifications of its subcontractors and their employees, and how the SRA team would function together was reasonable, logical, and entirely consistent with the RFP evaluation scheme.

SRA proposed a team [DELETED] to meet RFP qualification requirements and to perform the work. SRA's proposal stated that the [DELETED] team employs more than [DELETED] employees located at more than [DELETED] sites throughout the United States. SRA proposed its own employees as well as those of its subcontractors for [DELETED] personnel positions. SRA proposed [DELETED] for the critical position of project manager. Among other things, SRA stated that the project manager [DELETED]. The SRA proposal indicated that subcontractors would perform [DELETED],<sup>4</sup> and SRA stated

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<sup>4</sup>According to SRA, it would perform [DELETED] of the total labor hours required with [DELETED] while subcontractor employees [DELETED]. However, based upon SRA's proposal's description of SRA's technical approach to the required tasks, the EPA technical evaluation team estimated that SRA would perform [DELETED] of the work while its subcontractors would perform [DELETED] of the work assigned.

that it alone would determine how to allocate work under the contract.

The RFP stated that the evaluation would include consideration of any team members, including subcontractors, consultants, and experts. In describing one of the subfactors in the corporate capability, experience, and knowledge evaluation factor, the RFP stated that proposals would be evaluated on how well offerors and their subcontractors demonstrated corporate capability and experience in performing work similar in type, scope, and complexity to the requirements of the SOW. Clearly, the SRA team's experience [DELETED] was encompassed within this evaluation subfactor, and the evaluation panel reasonably noted that [DELETED]. See Human Resources Research Org., supra. Nonetheless, the evaluation team rated SRA's BAFO as good with some superior features on this subfactor.

The RFP also described the management approach evaluation factor to include evaluation of an offeror's "approach to planning, organizing, administering, coordinating, and monitoring work," as well as "the effectiveness of its proposed management structure." The agency reports and the record confirms that the evaluation team was primarily concerned with SRA's [DELETED] to perform the requirement. In this regard, the evaluators noted that SRA [DELETED] to perform significant areas of the SOW and [DELETED] of required expertise. While the evaluation panel rated SRA's proposal as adequate or better on the five subfactors, comprising the management approach evaluation factor,<sup>5</sup> the evaluators expressed [DELETED], among other things, that:

[DELETED]

The RFP also stated that proposals would be evaluated under the corporate capability, experience, and knowledge evaluation factor on how well offerors and their subcontractors demonstrated their capability to meet deadlines. The technical evaluation team commented upon SRA's BAFO as follows:

[DELETED]

Nevertheless, when SRA provided documentation to show [DELETED], the evaluators rated SRA's proposal as "good with superior features" on this subfactor.

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<sup>5</sup>SRA's proposal was rated as "adequate" on two of the five management approach subfactors and "good with superior features" on the other two subfactors.



Basically, the evaluation documents show that, even though SRA's proposal received generally good ratings, the evaluators had some concern that it might be difficult to work with a number of subcontractors' employees at various sites throughout the country while at the same time having to [DELETED]. The evaluators also had some concern about how SRA would coordinate work on various task orders when employees from several different companies would be required to work on the same task (or on different parts of the same task) and whether SRA could perform the work economically, efficiently, and in a timely manner. In our view, the evaluators' consideration of these and other matters was consistent with and encompassed by the above evaluation factors and subfactors. Id. Furthermore, an agency may properly consider efficiency when comparing the relative merits of proposals; the fact that efficiency is not itself set forth as a specific evaluation factor does not preclude its consideration in connection with evaluation factors to which it is related. See Johnson Controls World Servs., Inc., B-257431; B-257431.5, Oct. 5, 1994, 94-2 CPD ¶ 222.

The protester next complains that the agency did not hold meaningful discussion with it concerning two facets of its proposal. SRA was rated "adequate" on the project personnel subfactor of the personnel qualifications evaluation factor and on the corporate capability and experience in performing similar work subfactor of the corporate capability, experience, and knowledge evaluation factor. SRA argues that EPA should have discussed these matters with it during discussions so that it could have improved its proposal. SRA also asserts that the agency treated it unfairly because it asked questions of ICF on areas of its proposal which were rated as "superior."

Agencies are required to conduct meaningful discussions with all competitive range offerors. See Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. In order for discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. However, the agency is not obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score. Id.; Veco/W. Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228.

As noted above, SRA's proposal was rated as "adequate" or better on each and every evaluation factor and subfactor. The record also shows that while the agency asked both SRA and ICF a number of questions and allowed the offerors to revise their initial proposals, the agency did not consider either proposal to have any deficiencies. The contemporaneous evaluation record reveals that the agency

considered all of the questions to be mere requests for "clarification or elaboration in areas that have already been addressed adequately." Since an agency is not obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score, EPA was not required to discuss these matters with SRA. See Johnson Controls World Servs., Inc., supra.

The protester next contends that ICF "gamed" its proposal by offering low-priced subcontractor personnel when in fact ICF will actually use its own higher-priced employees to perform the work. SRA argues that ICF's proposal did not commit the firm to use its proposed subcontractors for any particular number of labor hours or any particular portion of contract work.

The RFP did not require a commitment to use subcontractors for any particular amount of work. Consistent with the terms of the RFP, both ICF and SRA estimated the number of hours that subcontractors might work, but both firms specifically stated that [DELETED]. Moreover, the RFP provides that for each work assignment received from the EPA the contractor will submit a work plan--including a detailed staffing plan and cost estimate--for the contracting officer's approval. Thus, the contract safeguards against ICF using unnecessarily high-priced personnel. Because the allegation is unsupported and there is no evidence to support it in the record, we see no impropriety here. See Alpha Bldg. Corp., supra; Automated Data Management, Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229.

Finally, SRA argues that the agency's evaluation of ICF's proposal was less stringent, requiring less detail of ICF regarding its subcontractors than of SRA, thereby allowing ICF's proposal to receive a relatively higher evaluation score. For example, SRA alleges that EPA required less detail from ICF concerning the qualifications/experience of subcontractor personnel and concerning quality assurance on work performed by subcontractors. There is no merit to this argument.

There were critical differences between ICF's proposal and SRA's. First, ICF was the incumbent contractor and had been providing analytical and technical support services to EPA's Chemical Emergency Preparedness and Prevention Office since 1985. Second, whereas SRA relied upon subcontractors' expertise to fill many of the task areas of the SOW, ICF itself had a broad range of skills and experience in each of the task areas and was not as dependent upon subcontractors' expertise. In fact, ICF's proposal showed that the subcontractors [DELETED] ICF's capabilities in specific areas and provide [DELETED]. Moreover, contrary to the protester's allegation, ICF's proposal contained [DELETED]



concerning the qualifications and experience of many of its subcontractors' employees as well as ICF's own employees. In addition, ICF explained that its own quality assurance program was based upon [DELETED], stated that each of the subcontractors [DELETED], assigned [DELETED] contractors, and presented examples of problems that had arisen [DELETED] and explained how they had been solved. The evaluation record shows that EPA was well satisfied with ICF's proposal as reflected in its receiving a perfect score of 100 evaluation points. In these circumstances, the protest allegation provides no basis for finding EPA's evaluation unreasonable.

The protest is denied.<sup>6</sup>

Robert P. Murphy  
General Counsel

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<sup>6</sup>The protester also contends that EPA unfairly gave ICF's proposal full credit for the qualifications and capabilities of its subcontractors, but that EPA did not give SRA's proposal credit based upon its subcontractors. This ground of protest is denied because the evaluation record clearly shows that the evaluators did in fact, consider the expertise, qualifications, and credentials of SRA's subcontractors and their employees.